

NOT FOR CITATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELAINE L. CHAO, Secretary of
Labor, U.S. Department of Labor,

Plaintiff,

v.

LAWRENCE J. MAZZOLA, et al.,

Defendant.

No. C 04-04949 PJH

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO STRIKE AFFIRMATIVE
DEFENSES**

On May 11, 2005, the court heard argument in the motion of plaintiff Elaine L. Chao, Secretary of the U.S. Department of Labor, for an order striking defendants' 3rd through 13th, 15th, 16th, and 18th through 22nd affirmative defenses; striking the 23rd and 24th affirmative defenses asserted by the defendant ERISA Plan Trustees and defendant ERISA Plans; and striking the 23rd and 24th affirmative defenses asserted by defendant U.A. Local 38 of the United Association of Journeymen Apprentices of the Plumbing and Pipefitting Industry and defendant Local 38 Lakeside Haven, Inc. Having read the parties' papers and carefully considered their arguments, and the relevant legal authority, and good cause appearing, the court hereby rules as follows.

The motion is GRANTED as to the 18th affirmative defense of presumption of prudence, the 20th affirmative defense of discretionary conduct, and the 21st affirmative defense of reasonable cause, because the Secretary asserts, and defendants have

1 conceded, that these are evidentiary standards, not affirmative defenses.

2 The motion is DENIED as to the remaining affirmative defenses. In general, the court
3 finds that the arguments raised by the Secretary are premature, and would more properly be
4 presented in a motion for summary judgment, after the parties have engaged in discovery.
5 The court finds that the Secretary will not be prejudiced by a denial of the motion to strike at
6 this stage of the litigation.

7
8 **IT IS SO ORDERED.**

9 Dated: May 11, 2005



PHYLLIS J. HAMILTON
United States District Judge